



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 20 2008

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Alan Risenhoover,
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway, SSMC 3
Silver Spring, MD 20910

**Proposed Rule, Magnuson-Stevens Act Provisions; Environmental Review Process
for Fishery Management Actions at 50 CFR Part 700**

Dear Mr. Risenhoover,

The U.S. Environmental Protection Agency (EPA) has reviewed the National Marine Fisheries Service's (NMFS's) proposed revisions to its National Environmental Policy Act (NEPA) procedures for fishery management actions developed pursuant to the Magnuson-Stevens Act.

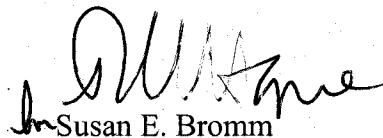
NMFS proposed these regulations to customize and supplement to the Council on Environmental Quality's (CEQ's) NEPA implementing regulations at 40 CFR Parts 1500-1508, and "where there are differences between the two, NMFS intends that these more specific regulations will be followed (in place of the general CEQ regulations) for fishery management actions." While EPA understands that this is the intent of the procedural changes, we must note NMFS's procedural changes do not affect EPA's responsibilities for the EIS filing process established under CEQ's NEPA regulations, at 40 CFR 1506.10(a).

Accordingly, we are very concerned about the potential for significant public confusion that will result from duplicate publications of notices of availability for Integrated Fishery Environmental Management Statements (IFEMSs). Under 50 CFR 700.604 of NMFS's proposed NEPA procedure, NMFS will publish a notice in the *Federal Register* notifying the public of any draft or final IFEMS available for public comment, and that publication date sets the minimum time periods for comment and wait periods. However, 50 CFR 700.603 of the proposed procedure requires that all IFEMS be filed with EPA. As such, EPA will still be required by 40 CFR 1506.10(a) to publish a notice of availability in the *Federal Register* for all of the IFEMSs filed by NMFS. Consequently, it is conceivable (even likely) that NMFS's and EPA's notices of availability for the same IFEMS will have different comment/wait periods.

In April 2008, we discussed, with NMFS and CEQ, the potential confusion that could result from these duplicate noticing processes. As a result of those discussions, we understood that NMFS's proposed NEPA procedures would be clarified to ensure that EPA's notice of availability would set the formal comment/wait periods for IFEMSS; NMFS's notice would include the comment/wait periods established in EPA's notice. Unfortunately, that agreed-to clarification is not reflected in this proposal. Accordingly, EPA strongly recommends that this issue be clarified in the final procedures.

We remain willing to work with NMFS to resolve this issue. With that in mind, please feel free to call Robert Hargrove, Director, NEPA Compliance Division, if you have any questions, or would like to discuss approaches for resolving this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan E. Bromm", is written over the printed name.

Susan E. Bromm
Director,
Office of Federal Activities

cc: T. Bolling, CEQ
H. Greczmiel, CEQ
S. Leathery, NOAA/NMFS